

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRUSTEES OF PLUMBERS & STEAMFITTERS
LOCAL 21 PENSION FUND,

DOCKET NO. 08-CV-0514
(Karas)

Plaintiffs,

-against-

**AFFIRMATION FOR
JUDGMENT BY DEFAULT**

SUSAN GHIO

Defendant.

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State of New York : ss:
County of Nassau : :

Danielle M. Carney, being duly sworn, says:

1. I am a member of the Bar of this Court and am associated with the firm Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC, attorneys for plaintiff in the above-entitled action and I am familiar with all the facts and circumstances hereinafter set forth.
2. I make this affidavit pursuant to section 55 of the Federal Rules of Civil Procedure in support of plaintiff's application for the entry of a default judgment against defendant.
3. This is an action to recover unpaid benefit contributions owed by defendant to plaintiff pursuant to a Collective Bargaining Agreement.
4. Jurisdiction of the subject matter of this action is based on 29 U.S.C. Section 1132(e)(i).
5. This action was commenced on January 18, 2008 by the filing of the summons and complaint. Annexed hereto and made a part hereof as "Exhibit A" is the Summons and Complaint. A copy of the Summons and Complaint was served on the defendant on

February 16, 2008 and proof of service by the process server was filed with this Court on February 27, 2008. Annexed hereto and made a part hereof as "Exhibit B" is the Affidavit of Service. The defendant has not answered the complaint and the time for the defendant to answer the complaint or otherwise move in regard to it has expired.

6. The complaint seeks replacement of pension distributions mistakenly made to the Defendant.

7. Upon information and belief on or about December 1, 2006 and January 1, 2007, the Defendant mistakenly received through direct deposit, \$43,336.42 as a beneficiary of Michael Ghio. Upon information and belief on or about March 1, 2007, the Plaintiff Fund Office discovered the Defendant had been overpaid in the amount of \$43,336.42. On or about March 1, 2007, the Fund Office contacted the Defendant notifying her of the overpayment of \$43,336.42 and requested the return of the \$43,336.42. The Defendant paid \$3700.00 but has failed to pay the remaining balance of \$39,636.42. On or about December 6, 2007, our offices sent a demand letter to the Defendant by regular and certified mail on advising her of the overpayment of \$43,336.42 and demanding return of the overpayment to avoid litigation.

8. This action seeks judgment for \$44,450.97 which includes the principal repayment in the amount of \$39,636.42, interest in the amount of \$2,774.55 (calculated at 7% of the principal amount owed), attorney fees in the amount of \$1,580.00; and court costs and disbursements in the amount of \$460.00 as shown by the Statement of Damages (annexed as Exhibit C), which is justly due and owing, and no part of which has been paid. Attached hereto as Exhibit D, is a copy of the process server bill in the amount of \$110.00.

9. The disbursements sought to be taxed have been made in this action or will necessarily be made incurred herein.

10. Since this action is based on an audit and costs which are not “susceptible of mathematical computation”, there is no need to prove the amount of damages at an inquest proceeding. Muskin v. Ketchum, 2004 U.S. District, Lexis 20976 (SDNY 2004).

11. The Defendant is not an infant and to the best of the Plaintiff’s knowledge, the Defendant is not an incompetent.

12. The attorney’s fees are calculated as follows:

• Reviewed file and prepared Complaint	3.5 hours
• Telephone conversation with Fund Office	.3 hours
• Sent Complaint out for service	.3 hours
• Filed Affidavit of Service	.3 hours
• Prepared request for Default Judgment	3.5 hours
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	7.9 hours

Total: 7.9 hours x \$200 per hour=\$1,580.00

13. The disbursements sought to be taxed have been made in this action or will necessarily be made incurred herein.

WHEREFORE, Plaintiff requests the entry of Default and the entry of the annexed Judgment against the Defendant.

Dated: June 9, 2008

_____s/_____
Danielle M. Carney (DMC7471)
BARNES, IACCARINO, VIRGINIA,
AMBINDER& SHEPHERD, PLLC
Three Surrey Lane, Suite 200
Hempstead, NY 11550
(516) 483-2990

